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Supreme Court, U.S.
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No. 98-

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1997

ROBERT MERRILL,

*Petitioner,*

v.

STATE OF ALABAMA,

*Respondent.*

**On Petition for a Writ of Certiorari to the Supreme Court of Alabama**

## PETITION FOR A WRIT OF CERTIORARI

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75 pp

## QUESTIONS FOR REVIEW

Whether the trial court erred in denying Defendant's pretrial Motion to Suppress his statements and erred in admitting the statements into evidence at trial, when the evidence unequivocally demonstrated that the Defendant invoked his Fifth Amendment right to remain silent and refused to give an oral or written waiver of these rights.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| TABLE OF CONTENTS | ii |
| TABLE OF AUTHORITIES | iv |
| DECISIONS BELOW | 1 |
| STATEMENT OF JURISDICTION | 1 |
| CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THIS CASE | 1 |
| STATEMENT OF THE CASE | 2 |
| I. STATEMENT OF THE FACTS | 2 |
| REASONS TO ALLOW THE WRIT | 5 |
| II. LAW ENFORCEMENT CANNOT IGNORE A SUSPECT'S CLEAR EQUIVOCATION OF HIS RIGHT TO REMAIN SILENT AND IMMEDIATELY CONTINUE INTERROGATION ONCE THE RIGHT HAS BEEN INVOKED. THEY MUST CEASE INTERROGATION AT THAT POINT | 5 |

## TABLE OF CONTENTS--continued

Page

CONCLUSION 12

APPENDIX A

Opinion from the Court of Criminal Appeals

APPENDIX B

Alabama Supreme Court Denial of Certiorari

APPENDIX C

Excerpts from Trial Record

APPENDIX D

Experts from Trial Court Transcript of Proceedings and Testimony

APPENDIX E

Supreme Court of the United States Letter Granting Extension of Time

## TABLE OF AUTHORITIES


| | Page |
|---|---|
| *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 301 (1991) | 6 |
| *Delapt v. Dugger*, 890 F.2d 285 (11th Cir. 1989), cert. denied, ___ U.S. ___, 110 S.Ct. 2628, 110 L.Ed.2d 648 (1990) | 8 |
| *Edwards v. Arizona*, 491 U.S. 477, 68 L.Ed.2d 378, 101 So.Ct. 1880 (1981) | 5 |
| *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992) | 5-9 |
| *Lewis v. State*, 535 So.2d 228 (Ala. 1988) | 6 |
| *Lightbourne v. Dugger*, 829 F.2d 1012 (11th Cir. 1987) | 8 |
| *Malone v. State*, 452 So.2d 1385 (Ala. Ct. Cr. App. 1984) | 6 |
| *Michigan v. Moseley*, 423 U.S. 96, 103 S.Ct. 321, 46 L.Ed.2d 313 (1975) | 5, 8 |

## TABLE OF AUTHORITIES--continued


| | Page |
|---|---|
| *Moore v. Dugger*, 856 F.2d 129 (11th Cir. 1988) | 8 |
| *Slaton v. State*, 680 So.2d 879 (Ala. Cr. App. 1995), aff'd *Ex parte Slaton*, 680 So.2d 909 (Ala. 1996) | 11, 12 |


### Statutes and Constitutional Provisions


| | |
|---|---|
| *C. Gamble McElroy's Alabama Evidence* §200.01 (5th Ed. 1996) | 6 |

## DECISIONS BELOW

The Circuit Court of Baldwin County, Alabama, the Honorable James H. Reid presiding, issued an order denying Merrill's Motion to Suppress his statement on January 27, 1997. *State v. Merrill*, CC-96-1198, CC-96-1199 and CC-96-1257. (January 27, 1997). The Alabama Court of Criminal Appeals affirmed the order of the trial court by memorandum. *State v. Merrill*, No. CR-96-1041, opinion at November 14, 1997. The Alabama Supreme Court denied Merrill's Petition for Writ of Certiorari without opinion on May 11, 1998. *State v. Merrill*, No. 1970857.

## STATEMENT OF JURISDICTION

The Alabama Court of Criminal Appeals affirmed the Circuit Court's denial of Merrill's suppression motion on November 14, 1997. *State v. Merrill*, CR-96-1041. Merrill then filed for Writ of Certiorari to the Alabama Supreme Court and his Petition was denied on May 22, 1998. *State v. Merrill*, 1970857. Merrill was granted an extension of time until September 25, 1998 by the United States Supreme Court to file his Petition for Writ of Certiorari. Merrill asks this Court to review the Alabama Supreme Court's affirmance of the denial of the suppression motion. This Court has jurisdiction to review the judgment of the Alabama Supreme Court under 28 U.S.C. §1257. Section 1257 gives the Court jurisdiction to review the decision affirming the denial of the suppression motion.

## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

## STATEMENT OF THE CASE

### I. STATEMENT OF FACTS:

The Appellant, Robert Lee Merrill, was originally arrested and charged with sexually abusing his minor daughters on June 21, 1996. Merrill and his wife, Sarah, had the following children: Alana, Faline, Robert and Miranda. Merrill's stepsister, Crystal, also lived with him during this time.

On or about December 16, 1996, a Motion to Suppress the Defendant's statement was filed and on January 27, 1997 a hearing was held with respect to said matter. (Appendix D, p. 217-219). The trial judge denied the Motion to Suppress the statements and the statements were introduced at trial. The facts surrounding the taking of the statement are presented below.

This case originated when a confrontation ensued between Sarah Merrill and her daughter, Alana Merrill, and a discussion was had between the two parties implicating Robert in a sexual abuse incident involving Alana. Upon receiving this information, Sarah Merrill went to the

Robertsdale Police Department and a report was forwarded to the Department of Human Resources and members of the Baldwin County Sheriff's Department. Shortly thereafter, members of the Baldwin County Sheriff's Department were dispatched to arrest Mr. Merrill and charge him with District Court warrants alleging rape and sexual abuse against the previously listed parties. The detectives assigned to investigate the case arrested Mr. Merrill and immediately transported him to the Robertsdale Police Department for questioning. (Appendix D, p. 177-181).

When the Appellant was first arrested and taken to the Robertsdale jail for questioning, he was read his entire Miranda rights and asked by investigators to speak about the case. The Defendant was advised he did not have to discuss the case and was free to cease questioning at any time. (Appendix D, p. 171-181, 1039, 1040).

Immediately after being advised of his rights, the Appellant clearly responded "I don't want to talk about this right now." (Appendix D, p. 187-200, 1068-1069). Further, the Appellant corroborated his refusal to speak by refusing to sign the written waiver portion contained in the Miranda form. (Appendix D, p. 187-200, 1046, 1047).

Immediately afterward, the detectives initiated conversation with the Appellant. (Appendix D, p. 187-200, 1069). They elaborated about how burdensome these types of cases were and how children never lie about their accusations. (Appendix D, p. 192-193). After finishing their speech, the detectives stopped and waited for a response from the Appellant. (Appendix D, p. 192-193). The accused remained silent. (Appendix D, p. 192-193).

The investigating officer again immediately reinitiated conversation with the accused. (Appendix D, p. 195-196). Again, the accused refused to discuss the case and remained silent after the detective ceased speaking. (Appendix D, p. 195-196).

Then, a second detective began speaking to the Appellant and initiated post Miranda conversation. (Appendix D, p. 200-212). And for a third time, the accused remained silent. At this point, the accused had announced his refusal to discuss the case, physically refused to sign the waiver, and remained silent on at least three occasions when immediately confronted by the investigating officers. (Appendix D, p. 200-212).

After the third refusal, the State claimed the accused then made a "voluntary" statement of some kind. (Appendix D, p. 1125). The detective does not remember what the statement referenced. (Appendix D, p. 1125).

After the "voluntary" statement was allegedly made, the accused stated that he did not want to talk about the specifics of the case. (Appendix D, p. 1274-1278). Again, the officers tried to coerce the accused into making a statement and then again initiated further conversation. Finally, when all of the Defendant's refusals were ignored, the accused told the officers that he committed all of the acts contained on the paper. (Appendix D, p. 1127). Only then, was the interrogation ceased.

The above cited facts were clearly enunciated at the Motion to Suppress, and trial, not by the Defendant, but by the deputies in charge of investigating this case. None of the above facts can be disputed and they without question

illustrate a complete disregard for the Appellant's right to remain silent.

## REASONS TO ALLOW THE WRIT

The Alabama Supreme Court's decision in the *Merrill* case conflicts not only with it's own decisions, but with the decisions of the United States Court of Appeals for the Eleventh Circuit and the Supreme Court of the United States. The undisputed testimony indicated that Merrill invocated repeatedly and unambiguously, that he wished to remain silent. Merrill stated specifically "I don't want to talk about this right now." The officers immediately refused to respect Merrill's rights to silence and immediately refused to case interrogation. The lower courts failed to address this problem and upheld the admission of the statement on a completely unrelated theory that Merrill did not really refuse to speak, he was just embarrassed. The lower courts specifically failed to factor the officers' unwillingness to cease questioning into the totality of circumstances analysis as required by *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992) and *Michigan v. Moseley*, 423 U.S. 96, 103 S.Ct. 321, 46 L.Ed.2d 313 (1975).

Because the decisions below conflict with the decisions of other courts, Merrill respectfully asks this Court to grant a Writ of Certiorari.

## II. LAW ENFORCEMENT CANNOT IGNORE A SUSPECT'S CLEAR EQUIVOCATION OF HIS RIGHT TO REMAIN SILENT AND IMMEDIATELY CONTINUE INTERROGATION ONCE THE RIGHT HAS BEEN INVOKED. THEY MUST CEASE INTERROGATION AT THAT POINT.

Because all extra judicial concessions are *prima facia* involuntary, the State has the burden of proving voluntariness. *Edwards v. Arizona*, 491 U.S. 477, 68 L.Ed.2d 378, 101 So.Ct. 1880 (1981); *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 301 (1991); *Malone v. State*, 452 So.2d 1385 (Ala. Ct. Cr. App. 1984). Unless the trial judge's conclusion that the inculpatory statement was voluntary and supported by evidence, it will not be upheld. *Malone v. State*, 452 So.2d 1385 (Ala. Cr. App. 1984).

"The test applicable in state and federal prosecution is whether the confession was free and voluntary; in other words it must not have been extracted by any sort of threats or violence, nor obtained by direct or implied promises, however slight, nor by exerting of any improper influence." *C. Gamble McElroy's Alabama Evidence*, §200.01 (5th Ed. 1996). The voluntariness must be based on substantial evidence. *Lewis v. State*, 535 So.2d 228 (Ala. 1988).

In *Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992), three defendants were charged with murder and kidnapping and eventually taken into custody for questioning. The facts almost mirror the facts in this case. After being arrested, Jacobs was read her Miranda rights and did not respond. Jacobs was then asked her name and responded "it didn't matter and it didn't make a difference." She was then asked to sign the Miranda rights card and refused. Shortly after, upon arriving at the police station, she again refused to answer questions. *Jacobs*, at 1292.

Within twenty minutes of the above Miranda questioning, Jacobs was questioned again, read Miranda rights, executed a waiver of rights form, and made a statement. *Jacobs*, at 1293.

About an hour later, a third conversation ensued with law enforcement and the Defendant. *Jacobs*, at 1293.

The U. S. Court of Appeals directly addressed each statement and ruled that the first two statements referenced above were taken in violation of the Defendant's Miranda rights, that the police failed to scrupulously honor the Defendant's right to remain silent, and that the two statements should have been suppressed at trial. *Jacobs*, at 1282. Further the U. S. Court of Appeals directly set out the law regarding a suspect's invocation of his right to remain silent.

> "Once a suspect demonstrates her desire to terminate questioning, law enforcement officials may not take statements from her unless they scrupulously honor her right to remain silent; although determining whether police have scrupulously honored a suspect's right requires a case-by-case approach, prophylactic standard minimally requires that for a significant period of time after suspect has exercised her right to remain silent, police must refrain from questioning her unless suspect both initiates further conversation and waives previously asserted rights to silence. U.S.C.A. Const. Amend. 5."

> "Determination whether there has been a 'significant period' of noninterrogation following invocation of right to remain silent, as an inquiry merely corollary to that of determining whether police have scrupulously honored a suspect's right to cut off questioning, involves careful scrutiny of

> totality of the circumstances. U.S.C.A. Const.Amend. 5"

*Jacobs*, at 1283-1284.

This standard is further enunciated in *Lightbourne v. Dugger*, 829 F.2d 1012 (11th Cir. 1987).

Law enforcement officials must cease an interrogation if the suspect provides merely an equivocal or ambiguous indication of her desire to remain silent. *Delapt v. Dugger*, 890 F.2d 285 (11th Cir. 1989), cert. denied, ___ U.S. ___, 110 S.Ct. 2628, 110 L.Ed.2d 648 (1990). The suspect must only in some manner evidence a refusal to talk further. *Moore v. Dugger*, 856 F.2d 129, (11th Cir. 1988).

In *Jacobs*, the U. S. Court of Appeals examined three factors from *Michigan v. Moseley*, 423 U.S. 96, 103 S.Ct. 321, 46 L.Ed.2d 313 (1975).

> (1) Whether the police immediately ceased interrogation once the suspect invoked his right to silence.
>
> (2) Whether the police resumed questioning only after the passage of "significant time" and after administration of fresh Miranda warnings; and
>
> (3) Whether the police in their second round of questioning focused on a different crime.

In *Jacobs*, the Court noted that the Defendant established that she wished to cut off questioning and that

her non-responsive and responsive statements required the police to cease interrogation. The Court further noted that the continued conversation by law enforcement was only an attempt to elicit further information from the suspect. Accordingly, the statement was held inadmissible. *Jacobs*, at 1293.

Also, the Court noted that the twenty minute delay between questioning was not a significant period of time between the invocation of silence and the actual delivery of the second statement. Again, the statement was ruled inadmissible. *Jacobs*, at 1293.

In the case before this Court, we have almost an identical invocation of silence, with the exception that Robert Merrill's equivocation was clearer than Jacobs' and no time passed between the continued interrogation. Nowhere did the officer try and clarify Mr. Merrill's statement; the reason no clarification statement was made is because the officer KNEW, contrary to the State of Alabama's assertion in their brief, that "I don't want to talk" means "I don't want to talk." The officer refused to cease interrogation and decided to take his chances with the Court. Also, just as in *Jacobs*, Robert Merrill refused to sign the waiver form at the same time he refused to discuss the case with police. How could an invocation of silence become any clearer than the exact fact pattern before this Court?

Yet incredulously, the police would have this Court believe the statement ultimately received was voluntary. This position does not hold water and is seen in the following testimony:

KEN RAINES:

Q. "Let me ask you deputy, if you believe that a person, when you go and interrogate them, does not have to talk to you, what else do they have to say besides I don't want to talk to you, to get you to recognize their rights?"

DEPUTY:

A. "If he would have told me, I do not want to talk to you, I would have interpreted that as, did he - - that he invoked his rights. But his statement was, I do not want to talk to you about it right now, or talk to you right now. I - indicating that he might later."

Q. "So if he makes the statement, I do not want to talk to you, that's enough of an invocation right, in your opinion, and if you add "right now" to that sentence, then that's different in your opinion?"

A. "That indicates that he might be willing to talk about it later."

Q. "If he makes the statement that, I do not want to talk to you, period, in your presence, and he makes that statement to Deputy Cook, then you are saying that you had to stop and cease questioning when you heard it, is that correct?"

A. "If he would have said, I do not want to talk to you period?"

Q. "Yes sir."

A. "Yes sir."

The fallacy behind this position is two-fold. First, the policeman did not wait until later to try and re-interrogate the accused. He immediately continued on with the interrogation. (Appendix D, p. 191). Secondly, if one enunciates that "I do not want to talk to you," what is to keep the officer from continuing to initiate conversation on the premise that the interrogator is unsure if the accused is referring to right now or later with respect to conversation? The State's position is unsupported by the law of this State, the law of this land, and good old fashioned common sense.

In the lower Court's previous memorandum affirming the trial court, the lower Court tried to use *Slaton v State*, 680 So.2d 879 (Ala. Cr. App. 1995), aff'd *Ex parte Slaton*, 680 So.2d 909 (Ala. 1996) as persuasive authority to indicate that the invocation of silence by this Defendant was just the product of embarrassment or fear. Such an argument holds no water.

In *Slaton*, the Alabama Supreme Court correctly held that the Defendant's response "Oh, God, I don't feel like going through all this" is ambiguous and was not an unequivocal invocation of the right to remain silent. *Slaton*, at 886-887.

The Defendant in this case said "I don't want to talk about it right now." In response, the officers immediately kept talking and kept initiating conversation in an attempt to solicit further conversation from the Defendant.

The officers could have waited, come back later, and inquired if the suspect would talk to them. These deputies chose not to wait, not to follow the law, and to roll the dice. If the U. S. Supreme Court and the U. S. Court of Appeals for the Eleventh Circuit's prior interpretation of the law as to an individual's right to remain silent carries any weight, then this decision will be reversed. Counsel for the Defendant submits this is bad law.

How can one argue that when a person says "I don't want to talk about it," that the statement means something else? That is the State's position. If the State's position is upheld, then from now own, when a suspect says, "I don't want to talk about it," that's not clear enough to tell a person he wishes to remain silent. If that's the case, what other magic language exists that is clear enough to tell a person that you don't want to talk about it?

## CONCLUSION

Robert Merrill implores this Court to uphold an individual's right to remain silent and not encourage law enforcement's disregard for the law or create a brand new language necessary to convey one's thoughts to another.

As such, Merrill respectfully asks this Court to grant a Writ of Certiorari to address the lower courts' rulings regarding the invocation of silence by Merrill.

Respectfully submitted,

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# APPENDIX

# APPENDIX A

## IN THE SUPREME COURT OF ALABAMA

May 22, 1998

1970857

Ex parte R. M. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: R. M. v. State) (96-1041) (Baldwin: CC-96-1198;-1199;-1257)

**CERTIFICATE OF JUDGMENT**

Writ Denied

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The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

COSTS TAXED TO PETITIONER.

ALMON, J. — Hooper, CJ., Houston, Cook and Lyons, JJ., concur.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 22 day of May, 1998

/s/ Robert G. Esdale
Clerk, Supreme Court of Alabama

## APPENDIX B

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
Judicial Building, 300 Dexter Avenue
P.O. Box 301555
Montgomery, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
JEAN WILLIAMS BROWN
PAMELA W. BASCHAB
Judges

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[stamp—RELEASED; NOV 14 1997; CLERK;
ALA COURT CRIMINAL APPEALS]

**MEMORANDUM**

CR-96-1041 Baldwin County Circuit Court
No. CC 96-1198, CC 96-1199, CC 96-1257

R. M. v. State

*Affirmed by memorandum.*

The appellant was convicted in a jury trial of nine counts of sexual abuse in the first degree and six counts or rape in the first degree. Specifically, the appellant was convicted of one count of statutory sexual abuse in the first degree, in violation of § 13A-6-66(a)(3), *Code of Alabama* 1975, and six counts of rape by forcible compulsion, in violation of § 13A-6-61(a)(1), *Code of Alabama* 1975, all committed against A.M., his step-daughter. He was convicted of four counts of sexual abuse in the first degree by forcible com-

pulsion, in violation of § 13A-6-66(a)(1), *Code of Alabama* 1975, all committed against C.R.M., his step-sister. Finally, he was convicted of four counts of statutory sexual abuse in the first degree, in violation of § 13A-6-66(a)(3), *Code of Alabama* 1975, all committed against F.M., his daughter.

The trial court sentenced the appellant to serve ten years in prison on the one count of sexual abuse and to life imprisonment on each of the six counts of rape involving A.M. It sentenced him to serve ten years in prison on each of the four counts of sexual abuse in the first degree involving C.R.M. It also sentenced him to serve ten years in prison on each of the four counts of sexual abuse in the first degree involving F.M. The court ordered the sentences for all counts involving the same victim to run concurrently, while ordering the sentences imposed under each indictment [1] to run consecutively. The appellant raises several issues in this appeal.

I.

The appellant argues that because Deputies Cook and Stewart [2] of the Baldwin County Sheriff's department obtained his statement by violating his right to remain silent under *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966), the trial court committed reversible error by denying his motion to suppress his statement. Because the appellant never unequivocally invoked his rights under *Miranda*, we disagree.

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[1] The grand jury issued three indictments against the appellant. Each indictment included the allegations of the acts committed by the appellant against a different victim.

[2] Stewart is referred to at various times in the record as "Sergeant Stewart," "Deputy Stewart," and "Investigator Stewart."

The record[3] reflects that, on June 21, 1996, after Stewart arrested the appellant at his home, Stewart gave the appellant his *Miranda* rights from memory, but did not ask him any questions. After the appellant was taken to the Robertsdale Police Department, Stewart, joined by Deputy Cook, began to interview him. Before interviewing the appellant, Cook gave him his *Miranda* rights a second time, this time using a "Statement of Miranda Rights" form. This form set forth the individual rights guaranteed an accused under *Miranda* and contained a brief section, followed by a signature line, for one to signify that he had waived his *Miranda* rights.

Both Cook and Stewart testified that no one threatened the appellant or made any promises to induce him to make a statement. The two deputies testified that no one either suggested that things would go easier for the appellant if he cooperated and gave a statement, or implied that things would be more difficult for him if he refused to cooperate. The deputies testified that the appellant's speech was coherent and he did not appear to be under the influence of drugs or alcohol at that time. Cook stated the appellant appeared to understand the rights read to him.

Cook read each of the five rights included on the form to the appellant. As Cook finished reading him each right, he asked the appellant to place his initials beside that right. After placing his initials beside the fifth right, the appellant told Cook "he didn't want to talk about that [the case] right now" and refused to sign the waiver form. (R. 189); (R. 1124).

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[3] The appellant raised the admissibility of his statement to Deputies Cook and Stewart in a pretrial motion, and a hearing on this issue was held immediately prior to his trial. The court denied the appellant's motion before the beginning of his trial. The appellant also raised this issue at trial, and the court once again allowed the parties to present evidence in support of their respective claims. We have summarized all the relevant evidence presented on both occasions.

After this remark, Stewart continued to talk to the appellant for several minutes about the case generally, but he did not ask him any questions. Stewart stated that he later asked the appellant if he was too embarrassed to talk about what happened. Stewart testified that after the appellant told the deputies that he did not want to talk about the allegations against him, he asked the appellant if he was invoking his *Miranda* rights and that the appellant did not respond to this question. (R. 190-91). Stewart told the appellant the allegations he and Cook were investigating came from the appellant's children, not from him and Cook. Stewart told the appellant that they took children's claims of sexual abuse seriously because children did not make such claims lightly. Stewart said to the appellant that, if he had a problem, the two deputies would be glad to talk with him about it because that was why they were there. Stewart further suggested that the appellant needed to consider his relationship with the children and what they were dealing with. As Stewart was talking to him, the appellant made a sudden comment about one of the girls. Cook did not hear what the appellant said, but stopped him and read him his *Miranda* rights for a second time from the form.[4]

Once the appellant signed the waiver section of the form, Cook handed him one complaint at a time and explained to him what that complaint charged him with. Cook then allowed the appellant to read each complaint himself. Cook testified that, after he read each complaint, the appellant commented, "Yes, that happened." Cook testified the appellant was initially uncertain as to the dates in some of

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[4] Stewart and Cook gave the appellant his *Miranda* rights a total of three times. Stewart gave the appellant his rights once orally as Stewart placed him under arrest at his home. Deputy Cook read him his rights twice using the form while the appellant was at the Robertsdale Police Department.

the complaints, but he then agreed that if those were the dates the girls said the acts happened, then that's when they happened.

The appellant testified at trial but did not testify at the suppression hearing. The appellant testified that after they read him his rights, he told the deputies that he "did not want to talk to anybody, period. I just wanted them to leave me alone." (R. 1275). The appellant testified he told one of the deputies he had no idea why he was arrested and that the deputy handed him all of the complaints at one time, telling him these were the charges. The appellant denied he had had an opportunity to read any of the complaints. The record contains no indication, other than the appellant's own testimony, that the appellant asked to speak to an attorney.

In *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), the United States Supreme Court reasoned that, to adequately invoke his right to counsel under *Miranda*, a suspect's request for must be clear enough so that a reasonable police officer under the circumstances would be aware that the suspect is requesting counsel. *Id.*, 114 S.Ct. at 2355. "Invocation of the *Miranda* right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.' *McNeil v. Wisconsin, supra*, 501 U.S., at 178, 111 S.Ct. at 2209." *Davis v. United States*, 512 U.S. at 459.

In *Ex parte Cothren* [Ms. 1961250, August 22, 1997] ___ So.2d ___ (Ala. 1997), the Alabama Supreme Court affirmed our court's refusal to extend the rule of law in *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981), to cases in which the appellant makes " 'an ambiguous or equivocal reference to an attorney.' " slip op. at 2. (Citation omitted). In holding that the appellant's purported request for counsel was equivocal because it

was capable of equally plausible, differing interpretations, the *Cothren* court reasoned as follows:

> " '[T]he suspect must unambiguously request counsel. As we have observed, "a statement either is such an assertion of the right to counsel or it is not." *Smith v. Illinois*, 469 U.S., at 97-98 (brackets and internal quotation marks omitted). Although a suspect need not "speak with the discrimination of an Oxford don," post, at 476 (Souter, J., concurring in judgment), he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect. See *Moran v. Burbine*, 475 U.S. 412, 433, n.4, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986) ("[T]he interrogation must cease until an attorney is present only [i]f the individual states that he wants an attorney") (citations and internal quotation marks omitted).

*Ex parte Cothren, supra.*

In *Slaton v. State,* 680 So.2d 879 (Ala.Cr.App. 1995), aff'd, *Ex parte Slaton,* 680 So.2d 909 (Ala. 1996), the appellant, "an admittedly scared" 17 year-old, was arrested for murder and rape and taken to the police station for questioning. One of the detectives interrogating Slaton read him his *Miranda* warnings and Slaton signed a waiver form which relinquished his rights under *Miranda.* During his interrogation, the appellant exclaimed, "Oh, God, I don't feel like going through all this." On appeal, Slaton argued that this statement meant that he wanted to stop talking to the police and was invoking his right to remain silent. The *Slaton* court noted that:

"The United Stated Supreme Court has held that police officers must inform people of their constitutional rights before beginning custodial interrogations. *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 166 L.Ed.2d 694 (1966). Included in the right to remain silent is a right to cut off questioning. *Miranda,* 384 U.S. at 474. When a defendant invokes his right to remain silent, that request must be 'scrupulously honored.' *Michigan v. Mosley,* 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975).

> "This court recently stated that whether someone has invoked his right to remain silent is determined on a case-by-case basis.
>
> " 'Whether there was a waiver of the right to remain silent and the right to counsel and whether the confession was knowingly, voluntarily, and intelligently made must be decided from the particular facts and circumstances of each case, including the background, experience, and conduct of the accused—the totality of the circumstances.'

"*Holmes v. State,* 598 So.2d 24, 26 (Ala.Crim.App. 1992); see also *Thomas v. State,* 373 So.2d 1167 (Ala. 1979), vacated on other grounds, 448 U.S. 903, 100 S.Ct. 3043, 65 L.Ed.2d 1133 (1980); *Magwood v. State,* 494 So.2d 124 (Ala.Crim.App. 1985), aff'd, 494 So.2d 154 (Ala.), cert. denied, 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986)."

*Slaton v. State,* 680 So.2d at 886-87. In affirming the trial court's judgment, this court characterized the appellant's remark as follows:

> "We are not persuaded that Slaton's response, 'Oh God, I don't fell like going through all this,' was an unequivocal invocation of his right to remain silent. It

> does not strike us as any kind of conscious request that he be allowed to remain silent. Instead, Slaton's comment seems a natural outburst borne of the fear and anxiety created by the circumstances in which he found himself. Therefore, we hold that Slaton's statement was not an invocation of his right to remain silent, that his *Miranda* rights were not violated, and that his statement was properly used at trial."

*Slaton v. State,* 680 So.2d at 887.

Moreover, in affirming our judgment, the Alabama Supreme Court concluded that, taken in its proper context, the appellant's outburst had nothing to do with an attempt to invoke his *Miranda* rights. Rather, the court determined that the appellant simply disliked having to discuss "the sexual details of what he says happened . . . ." *Ex parte Slaton,* 680 So.2d at 914.

Here, as in *Slaton,* the appellant's statement seems to be the product of his fear and embarrassment caused by the discovery of his crimes, not an attempt to invoke his rights to remain silent or speak with an attorney. Cook and Stewart could have reasonably interpreted the appellant's comment that "he didn't want to talk about that [the case] right now" to mean that he would not object to discussing the case a few minutes later. There is no reason why appellant's comment would have alerted a reasonable police officer under the same circumstances to the fact that the appellant was requesting counsel. *Davis v. United States, supra; McNeil v. Wisconsin, supra; Ex parte Cothren, supra.*

II.

The appellant contends that the state failed to offer sufficient evidence to support each of his fifteen convictions. We disagree.

In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution. *Faircloth v. State*, 471 So. 2d 485 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). Furthermore, a judgment of conviction will not be set aside on the ground of insufficiency of the evidence unless, allowing all reasonable presumptions for its correctness, the preponderance of the evidence against the judgment is so decided as to clearly convince the reviewing court that it was wrong and unjust. *Jackson v. State*, 516 So. 2d 726 (Ala. Crim. App. 1985).

> Section 13A-6-66, *Code of Alabama* 1975, states, in pertinent part:
>
> "(a) A person commits the crime of sexual abuse in the first degree if:
>
> "(1) He subjects another person to sexual contact by forcible compulsion; or
>
> " . . . .
>
> "(3) He, being 16 years old or older, subjects another person to sexual contact who is less than 12 years old."

"Sexual contact" is defined in § 13A-6-60(3), *Code of Alabama* 1975 as "[a]ny touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party." Section 13A-6-61(a)(1), *Code of Alabama* 1975, which provides that "[a] male commits the crime of rape in the first degree if . . . [h]e engages in sexual intercourse with a female by forcible compulsion." Section 13A-6-60(8), *Code of Alabama* 1975, defines "forcible compulsion" as "[p]hysical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of

immediate death or serious physical injury to himself or another person." *Id.* Evidence that victim engaged in sexual intercourse with defendant because she was scared that she would be killed unless she acquiesced constituted "forcible compulsion" within the meaning of the rape in the first degree statute. *Alldredge v. State*, 453 So. 2d 1332 (Ala. Crim. App. 1984). The element of forcible compulsion for both first degree rape and sexual misconduct is identical. *Martin v. State*, 504 So. 2d 335 (Ala. Crim. App. 1986).

> "In *Powe v. State*, 597 So.2d 721 (Ala. 1991), this Court held that the element of forcible compulsion could be established by the relationship of a child victim with the defendant charged with a sex crime involving forcible compulsion."

*Howell v. State*, 636 So.2d 1260, 1261 (Ala. 1993). The *Howell* and *Powe* courts recognized that an implied threat of disciplinary action exists between a child and an adult relative because of the authoritative role the adult plays in a child's world. Thus, the standard for "forcible compulsion" must be somewhat more stringent where the actor is someone in a parent-type role. Cf. *Powe v. State*, 597 So.2d 721, 728 (Ala. 1991).

In this case, the State established sufficient evidence to support each of the appellant's fifteen convictions. Each of the counts charged against the appellant appears to involve continuous conduct by the appellant, and the State was required under the doctrine of election to elect a specific offense it sought to prove. *J.D.S. v. State*, 587 So.2d 1249, 1256 (Ala.Cr.App. 1991). Although the State does have to prove that the elected incident occurred, the time and place of the offense are not necessary elements of a sexual offense. *Dilbeck v. State*, 594 So.2d 168, 174 (Ala.Cr.App. 1991). The testimony of appellant's child, step-child, and his sister, if believed by the jury, was sufficient evidence

upon which to support the appellant's convictions. *Myers v. State*, 677 So. 2d 807 (Ala. Crim. App. 1995). Each of the victims testified that the appellant had either forcible sexual contact or intercourse with them or that they were under the age of twelve when the appellant had sexual contact with them. Much of the appellant's conduct was witnessed by his youngest daughter, M.R.M., and by his son, R.K.M. Moreover, R.K.M. was forced by the appellant to have sex with his sister while the appellant watched.

The record reflects that the appellant's child, step-child and sister feared the appellant. The appellant was either trained in the martial arts or caused the children to believe that he was. A.M. testified that the appellant "knew all the pressure points" one could use to kill another person and he could break bricks with his bare hands. A.M. testified that the appellant had threatened to kill her if she ever told anybody what he had done to her. Clearly, the State not only established "forcible compulsion," as defined by § 13A-6-60(8), *Code of Alabama* 1975, but also under the standards of *Powe v. State*, 597 So.2d 721, 728 (Ala. 1991), as well. That, together with the children's testimony that the acts took place, was sufficient to support the appellant's convictions.

III.

The appellant argues that the trial court erred to reversal by finding that he failed to establish a prima facie violation of *Batson v. Kentucky*, 476 U.S. 79, 90 L. Ed. 2d 69, 106 S. Ct. 1712 (1986). We disagree.

Here, there were five blacks on the venire. The State used two of its strikes to remove blacks from the venire, leaving three blacks on the jury. In his attempt to make a prima facie showing of discrimination, appellant's counsel did not bring to the trial court's attention any factor that might show

that the prosecutor discriminated against jurors on the basis of race. The trial court found that the appellant had not made a prima facie showing of purposeful racial discrimination and that the State was therefore not required to give reasons for its strikes. We agree that the appellant failed to establish a prima facie case under *Batson* and *Ex parte Branch*, 526 So.2d 609 (Ala. 1987). *Ashley v. State*, 606 So.2d 187 (Ala.Cr.App. 1992); *Hood v. State*, 598 So.2d 1022 (Ala.Cr.App. 1991); *Parker v. State*, 571 So.2d 381 (Ala.Cr.App. 1990).

IV.

A.

The appellant argues the trial court erred by allowing the State to impeach him with a copy of a jail intake report because the report was unauthenticated hearsay and thus inadmissible for impeachment purposes. We disagree.

S.M., the appellant's wife, testified for the State. During cross-examination, the appellant asked her if she had been diagnosed with a sexually transmitted disease when their child M.R.M.[5] was born. S.M. answered that she had been diagnosed with herpes at that time. The appellant then asked his wife if they had ever engaged in unprotected sexual intercourse after she was diagnosed with herpes and she replied that they had. Finally, the appellant asked his wife whether any of her children had been examined to determine if they had any sexually transmitted diseases and she responded that they had not.

---

[5] M.R.M. was seven years old at the time of the appellant's trial and was not a victim in this case. She did witness some of the events alleged in the three indictments against the appellant and testified against the appellant at trial.

During the trial, defense counsel asked the appellant whether he "could have" contracted [herpes] from unprotected sex with his wife, and the appellant testified that "I don't see how I couldn't . . . ." During cross-examination, the prosecutor showed the appellant what he identified as the jail intake form that was completed from information supplied by the appellant when he was booked. This form was signed by the appellant and asked a number of questions concerning the appellant's health. The appellant admitted during cross-examination that the intake form indicated that he did not have any sexually transmitted diseases. This form was not offered into evidence by the State, but was used solely to impeach the appellant.

"A common method of impeachment is to ask a witness on cross-examination about the witness' prior statements that are inconsistent with present trial testimony. Such self-contradiction has long been held relevant to credibility whether the inconsistent statement is oral or in writing . . . ." C. Gamble, *Gamble's Alabama Rules of Evidence* § 613(a) (1995) (footnotes omitted). See also, Rule 613, Ala.R.Evid.

The appellant complains the State failed to lay the proper predicate for impeachment using this document. However, the appellant's argument is clearly refuted by Rule 613(b), Ala.R.Evid.:

> "(b) Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness has been confronted with the circumstances of the statement with sufficient particularity to enable the witness to identify the statement and is afforded an opportunity to admit or to deny having made it . . . ."

The appellant's argument that the trial court improperly impeached him by using his responses on the jail intake form is therefore without merit.

B.

The appellant further argues he was not given a copy of the appellant's jail intake or "booking" form in discovery and that the State's use of this document to impeach him violated Rule 16, A.R.Crim.P. The appellant therefore argues that he is entitled to a new trial. We disagree.

Discovery by the defense in a criminal case is governed by Rule 16.1, Ala.R.Crim.P. We are unable to find any provision of Rule 16.1 that would require the State to provide a record whose sole purpose is to document the physical condition of the defendant when he is booked into jail. We have also reviewed the appellant's motions for discovery and production and can find no pleading filed by the appellant that would require the production of his jail intake form. Because the State had no obligation under Rule 16.1, Ala.R.Crim.P., to produce the appellant's jail intake form, the trial court did not err by allowing the State to impeach the appellant with this form.

V.

The appellant next argues that "[t]he trial court erred in allowing the prosecutor . . . to improperly comment on the Defendant's Fifth Amendment right of self incrimination (sic) and impose upon him a burden to present evidence, a burden which he did not possess." We disagree.

On cross-examination, the appellant's attorney asked two of the victims, A.M. and C.R.M., and Deputy Cook whether any law enforcement officers had examined the appellant's employment records at Fovil Manufacturing. Defense counsel also asked the appellant "has anybody from the Sheriff's office gone out and pulled any of your work records." The appellant replied, "Not to my knowledge." The appellant was then asked a series of questions about his employment records at Fovil Manufacturing, his wife's

employment at the Riviera Centre, and the victim's school records. Thereafter, the following exchange occurred between defense counsel and the appellant:

> "[Defense Counsel]: Let's talk about all of these dates. Would you agree that if we had those records before us, that we could pin down some times, to say absolutely some things could not have happened during this time and some things could have happened possibly during this other time?
>
> "[The Appellant]: That would be a way to tell them."

(R. 1264). The implication of defense counsel's questioning was that the records referenced in his questions, if available to the jury, would exonerate the appellant of at least some of the charges against him and would cause doubts as to many of the remaining charges. On cross-examination, the prosecutor asked the appellant if he or anybody else had brought his employment records with him to trial and defense counsel objected.

> "'"A party who has brought out evidence on a certain subject has no valid complaint as to the trial court's action in allowing his opponent or adversary to introduce evidence on the same subject.'" *Hubbard v. State*, 471 So.2d 497, 499 (Ala.Cr.App. 1984) (quoting *Brown v. State*, 392 So.2d 1248, 1260 (Ala.Cr.App. 1980), cert. denied, 392 So.2d 1266 (Ala. 1981). See *Dulaney v. Burns*, 218 Ala. 493, 496, 119 So. 21 (1928), overruled on other grounds, Whitten v. Allstate Ins. Co., 447 So.2d 655, 659 (Ala. 1984). 'Whenever defense counsel injects an issue into a case during cross-examination, the State may, within the discretion of the trial judge, question the witness as to that matter.' *Austin v. State*, 434 So.2d 289, 292

(Ala.Cr.App. 1983). See also *Garrett v. State*, 580 So.2d 58, 60 (Ala.Cr.App. 1991) . . . ."

*Sistrunk v. State*, 596 So. 2d 644, 647 (Ala.Cr.App. 1992). "[T]his court determined, in *Twilley v. State*, 472 So. 2d 1130 (Ala. Crim. App. 1985), that '[t]he defense, by initially putting this matter into evidence, opened the door for the State to rebut such evidence if it could.' *Twilley*, at 1138. *Long v. State*, 621 So.2d 383, 388 (Ala.Cr.App. 1993).

By implying that his employment records would have disproved many of the State's charges against him, the appellant opened the door for the State to cross-examine him concerning these records. *Sistrunk v. State, supra; Long v. State, supra.*

VI.

Finally, the appellant appears to argue that the trial court erred to reversal by including in each of the written verdict forms a summary of the allegations that comprised that count. He argues that including this information on the verdict forms constituted a comment by the trial court on the evidence and was reversible error. We disagree.

At the conclusion of the trial court's oral charge, the court stated the following to the jury:

"Now, to aid you in the proper wording of a verdict in this case, I have prepared forms for your verdict. Each page is a separate verdict. You must return a verdict as to each one of those counts. I'll read the verdict forms to you.

"This is the verdict form as to count one, and I have it titled A.M., and you will know who it is when you start considering that verdict form.

"And I have some information on there for you, *this is not to be considered by you as evidence, the informa-*

*tion on the verdict form, it's simply to clarify and help you understand which count you are considering. Remember, the evidence is what you heard in the courtroom.*

"*This is just an aid, to help you what you are considering at any particular time* (sic).

"Here's the information concerning count one. This is the first occasion of alleged sexual abuse when A.M. was five years old and *when it was alleged* that the defendant rubbed his penis between her legs.

"Now, as to these *allegations* of count one, if you find that the defendant is guilty of that charge, your verdict would be, We the jury find the defendant guilty of sexual abuse in the first degree.

"If you find that the defendant is not guilty of that charge, then as to the allegations in count one, We the jury find the defendant not guilty. And that's what you do when you get to count one."

(R. 1379-80) (Emphases supplied). The trial court proceeded in this manner throughout the remaining fourteen counts of the three indictments. Where language describing the defendant's conduct appears in a given count, it was always preceded by the word "alleged."

As the judge read to the jury Count III of the first indictment, which involved the appellant's rape by forcible compulsion of A.M., and the numerous lesser included offenses, he reiterated the following:

"There are five more of those and I'm not going to read them. They are all the same. I'll just read you the factual information.

"I'll just read you the [factual] information at the top. *I'm calling it information, because I want to show you*

*what you are considering. I'm not saying it's facts in the case.*

(R. 1383) (Emphasis supplied). Thereafter, while summarizing the allegations of the cases involving C.R.M., the trial court stated as follows:

"*Again, its your determination as to whether those are facts or not in the case. That's just information to help you sort it out.*"

(R. 1385-86) (Emphasis supplied).

The appellant cited no authority to support his argument that the inclusion of the explanatory information within the verdict forms constitutes a comment by the court on the evidence. Neither were we able to locate any such authority. Nor have we have found any case law or other authority that states what may or may not be included in verdict forms. However, we do find helpful our court's recent decision in *Williams v. State*, [Ms. CR-92-0382, August 23, 1996] ___ So.2d ___ (Ala.Cr.App. 1996):

"Rule 21, Ala.R.Cr.P., gives the trial court discretion to send indictments to the jury room in a complex case. *Eddins v. State*, 501 So. 2d 574 (Ala.Cr.App. 1986); *Thompson v. State*, 473 So. 2d 1205 (Ala.Cr.App. 1985). This was a complex case, involving four indictments. There were two charges of capital murder and two of attempted murder, and numerous lesser included offenses were involved."

*Williams v. State, supra.*

This was a complex case which involved three victims, three indictments, and fifteen counts. The time periods involved in the various counts overlapped greatly. The appellant filed, and the trial court granted, a Motion for a More Definite Statement. When the State filed its More

Definite Statement, the Defendant filed a second Motion for a More Definite Statement, demanding still more information. The trial court included the additional facts in each verdict form so the jury would understand each of the fifteen counts on which it was voting. The trial court repeatedly stated to the jury that the summaries included within each verdict form were not evidence and stated when it began its explanation of the verdict forms that "Remember, the evidence is what you heard in the courtroom." (R. 1380).

In a case this complex, we cannot find error in the trial court's inclusion on each verdict form sufficient allegations to give the jurors some information of what they were voting on. This is especially true where, as here, the trial court exercised such diligence in insuring that the jury would *not mistake* its summaries for evidence. We believe including a summary of the *allegations* contained in each count is vastly superior to allowing the jury to take the indictment and/or More Definite Statement with it when it began its deliberations, as we permitted in *Williams v. State, supra.*

VII.

The appellant also alleges that the trial court erred by failing to cover the lesser included offenses as to Counts IV through VII involving the victim, A.M. However, the appellant's second argument is raised for the first time on appeal, and is therefore not preserved for appellate review. *Kennard v. State*, 531 So.2d 938, 940 (Ala.Cr.App. 1988); *Bolding v. State*, 428 So.2d 187, 191 (Ala.Cr.App. 1983).

For the foregoing reasons, the judgment of the trial court is affirmed.

Affirmed by memorandum.

All judges concur.

# APPENDIX C

## IN THE CIRCUIT COURT OF BALDWIN COUNTY

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**CASE: CC 96 001198.00**
**JUDGE: JHR**

STATE OF ALABAMA

VS

MERRILL ROBERT LYNN
BALDWIN CO CORR CTR
P O BOX 1329
BAY MINETTE, AL 36507 0000

DOB: 07/02/59 RACE: W SEX: M HT: 5 11 WT: 195 HR: EYE:
SSN: 421922688 ALIAS NAMES:

CHARGE1:SEXUAL ABUSE 1ST CODE1: SXA1 LIT:SEXUAL ABUSE 1S TYPE:F
CHARGE2:RAPE 1ST DEGREE CODE2: RAP1 TYPE:F
CHARGE3:RAPE 1ST DEGREE CODE3: RAP1 TYPE:F
MORE?: Y OFFENSE DATE: 01/31/93 AGENCY/OFFICER: COOK

DATE WAR/CAP ISS: DATE ARRESTED: 06/21/96
DATE INDICTED: 07/29/96 DATE FILED: 08/12/96
DATE RELEASED: DATE HEARING:
BOND AMOUNT: $325,000.00 SURETIES:

DATE1: DESC: TIME: 0000
DATE2: 09/27/96 DESC: ARRG TIME: 0900 A

DEF/ATY: RAINES, KENNETH R TYPE: R TYPE:
PROSECUTOR: WHETSTONE, JOHN D

**Consolidated Cases: CC-96-1198, 1199 & 1257**

OTH CSE: DC962440 CHK/TICKET NO: 96201234 GRAND JURY: 07-150
COURT REPORTER_____ SID NO: 000000000
DEF STATUS: JAIL DEMAND: Y

**CASE ACTION SUMMARY**
**CIRCUIT CRIMINAL**

DATE ACTION, JUDGMENTS, CASE NOTES
COUNT IV THRU VII — RAP1 — RAPE 1ST DEGREE

9-19-96—Motion To Transfer

9-19-96—Plea of Not Guilty and Waiver of Arraignment

9-20-96—Order To Transfer—Copy to D.A. & K. Raines & Judge Reid

9-20-96—Scheduling Order—Copy to D.A. & K. Raines

10-8-96—Motion To Reduce Bond

10-9-96—Motion To Preserve Evidence & Request For Production

10-8-96—Motion To Limit Interview of Witnesses

10-8-96—Motion For Discovery & Production of All Psychiatric And/or Counseling Records And/Or Information of Listed Victims In Indictments

10-8-96—Motion For Discovery & Production of DHR Investigative Report & Request For Any And All Exculpatory Information Related Thereto

10-8-96—Motion For More Definite Statement

10-8-96—Objection To Consolidation & Request For Oral Argument

10-8-96—Motion To Determine Pre Trial Admissibility of Evidence

12-16-96—Motion To Suppress

12-16-96—Motion For More Definite Statement

10-18-96—State's Response To Deft's Motion To Reduce Bond

10-18-96—State's Response To Defts Motion To Limit Interview

10-18-96—Motion To Consolidate

10-18-96—State's Response To Deft's Motion For Discovery & Production of DHR Report, etc.

10-18-96—State's Response To Deft's Motion To Determine Pre-Trial Admissibility of Evidence

10-21-96—State's Response To Deft's Motion For Discovery & Production of DHR Report

10-24-96—Order To Consolidate - (CC-96-1198, 96-1199 & 96-1257) Copy to D.A. & K. Raines

11-15-96—State's Response to Defendant's Motion for More Definite Statement

11-15-96—State's Response to Defendant's Motion for Discovery and Production of All Psychiatric and/or Counseling Records and/or Information of Listed Victims in Indictments

11-15-96—State's Response to Defendant's Motion for More Definite Statement

11-19-96—Motion For Depositions Pursuant To A.R.C.P. 16.6

11-26-96—State's More Definite Statement

11-15-96—State's Response to Defendant's Motion to Preserve Evidence and Request for Production of Materials

1-6-97—Order (see file copy) Copy to DA, Atty, DHR 1-7-97

1-14-97—Motion for Continuance

1/31/97—The Jury having been struck on 1/27/97, this case was tried and submitted to the Jury on 1/31/97 and the following verdicts were returned: As to Count I: "We, the Jury, find the Defendant guilty of Sexual Abuse in the First Degree." As to Counts

II, III, IV, V, VI, VII: "We, the Jury, find the Defendant guilty of Rape in the First Degree as charged in the Indictment. Anne Barber, Foreperson." whereupon the Court adjudged the Defendant guilty in each count and orders a presentence investigation with a report to be filed with this Court on or before 2/18/97. Sentencing is set 2/20/97 at 9:00 a.m. in Courtroom 1, Baldwin County Courthouse, Bay Minette, Al.

/s/ James H. Reid, Judge.

2-6-97—Copy to State Parole

2-20-97—Comes now the defendant and counsel and counsel for the State of Alabama before the Court for the defendant's sentencing on his conviction of all counts of this case, and the Court enters the attached sentencing orders. The defendant entered an oral notice of appeal. Counsel for the defendant's appeal is retained.

/s/ James H. Reid, Judge

3/6/97—Notice of Appeal to Court of Criminal Appeals, Att. General, DA, Ken Raines & Lou Ann Schell.

3-7-97—Commitment Mailed

3-10-97—Reporters Transcript Order

3-21-97—Docketing Statement

# APPENDIX D

## EXCERPTS FROM PROCEEDINGS

* * * * * * * * *

[R-177] told that he would be there in a little bit. So, we waited down the road for him to come home.

Q What happened when he arrived?

A I went to his house and I placed him under arrest.

Q Did he make any statements at that point to you?

A No, sir.

Q Did you read him his Miranda rights?

A Verbal statement, right.

Q You did read them off a card or from memory?

A Memory.

Q What did you tell him?

A He had the right to remain silent.

He had the right to have an attorney present before any questions were asked of him.

That he had the right to have an attorney present.

[R-178] And that he didn't have to make a statement.

Q Did he make a statement?

A No.

Q Did he ask for an attorney at that time?

A No, sir.

Q Was this before or after you placed him in the police car?

A This was before he was placed in the car.

Q Where did you go after you transported him?

A A marked unit transported him to the Robertsdale Police Department.

Q Did he make any statements at that time?

A During transport? He was transported by another officer. So, none that I know of.

Q Tell us again where you interviewed the Defendant.

A In Chief Bob Williams' [R-179] office, located at the Robertsdale Police Department.

Q And who was present during the interview?

A Myself, Mr. Merrill and Deputy Cook.

Q And what was his, the Defendant's physical aapearance during the interview?

A Slightly embarrassed, couldn't make eye contact, teary eyed.

Q When you read him his rights, upon arrest, did he appear to understand those rights?

A Yes, he did.

Q What was, whenever you heard him talk, was his speech coherent?

A Yes.

Q During the interview in Robertsdale, what did he say?

MR. RAINES: And I'm going to object, and during the interrogation what happened.

MR. BECK: Let me clear it [R-180] up. I'll withdraw the question.

MR. RAINES: Okay.

BY MR. BECK:

Q Now, was Mr. Merrill Mirandized again?

A Yes, he was.

Q How was that explained?

A Deputy Cook, after arriving in the office, Deputy Cook took a Miranda form, standard form, from the Sheriff's Department, and he read from the form.

Q What's contained on that form?

A The Miranda rights and the waiver.

Q What is that?

A That's the form that was read to Mr. Merrill.

Q What does the form say?

A The form says the statement of Miranda rights:

One. You have the right to a remain silent.

[R-181] Two. Anything you say can and will be used against you in a court of law.

Three. You have the right to talk to lawyer and have him present with you while you are being questioned.

Four. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.

Five. If you decide at any time to exercise these rights and not answer any questions or make any statements, you can decide at any time to exercise those rights.

Q Were those rights read to Mr. Merrill individually?

A Yes.

Q One after another?

A Yes.

Q There a place for Mr. Merrill to sign that form?

A Mr. Merrill initialled each

* * * * * * * * *

[R-187] Q Involving Alana Merrill and one count of sex abuse in the first degree involving Crystal Merrill and one count of sex abuse involving Faline Merrill?

A Right.

Q And Faline, by virtue of her age, and the other two by virtue of forcible compulsion, is that right?

A Yes, sir.

Q And after the Defendant read those complaints, his statement was, yes, that happened.

MR. RAINES: And I object to that. There's no testimony even that the Defendant was asked anything. He was just read his rights.

THE COURT: Well, you are being repetitious, John. You have already covered this.

MR. BECK: All right. I pass the witness.

CROSS-EXAMINATION

BY MR. RAINES:

[R-188] Q John, did you make any statements, o· Mr. Merrill, that you didn't tell us about?

A Yes, I did.

Q Can you tell me at what point in the conversation you made those statements?

A Well, it was after the reading of the Miranda form to him.

Q I want to try and back up, take it as it occurred. He's at the Robertsdale Police Department. You read him the Miranda form?

A (Nods head affirmatively).

Q Is that right?

A Deputy Cook reads the Miranda form.

Q You are sitting there watching?

A Right.

Q Once he finishes reading, Deputy Cook finishes reading the Miranda form, what's the first thing said by either one of —

[R-189] A After finishing the Miranda form, Mr. Merrill made the statement—Actually there was two statements. You know, there was two readings. And the first reading of it, Mr. Merrill made the statement, I do not want to talk about it right now.

Q Once he said he didn't want to talk about it, what did you do?

A I just talked to him. I asked him.

Q Well, let me ask you. He made the statement, I don't want to talk about it now. What is the next thing said by you or Deputy Cook? Or do you know?

A It was made by me.

Q And what did you say after he said, I do not want to talk about it right now?

A What did I say after that?

Q Yes, sir.

A I asked him if it was something that was too embarrassing. I [R-190] believe I asked him if he in fact was invoking his rights or wanted an attorney.

Q Do you know if you asked him that?

A About the attorney?

Q Yes.

A I know at one point I did. As to whether or not it was right then, I don't know. But I know I asked him, was he embarrassed. His head was down and he wouldn't make eye contact. And I asked him was it too hard to talk about. Too embarrassed to talk about. it. And in fact, at that point, I asked him, was he invoking his rights?

Q Do you know at that point in time, if you asked him that question or if it was later on in the conversation?

A I don't know if it was that point in time or not.

Q Okay.

A But during our conversations I did ask him that.

[R-191] Q At some point later on in the discussion, you know that you made that statement?

A Right, because he didn't answer me, you know, right back.

Q And it's a fair statement to say then that when y'all asked him to give a statement, he says he doesn't want to talk about it, and then you initiated a conversation from that point forward?

A He said he did not wish to talk about it right now.

Q And then you continued to initiate the conversation at that point by asking him if he was too embarrassed?

A Yes.

Q Now, I believe you mentioned there was another point in time where you asked him if he wanted to talk about it. And does he then say again, do you want to talk about it?

A He was read his rights and [R-192] he started talking about it. He started talking about some of the stuff that was going on. Deputy Cook said, you know, don't say anything, I've got to reread you the rights. And he read them to him again. That's when he signed the waiver.

Q Would you agree with me that there was another point in time, I believe, you made a statement, he was silent, didn't give you an answer, and you asked him another question?

A That's correct.

Q Explain what happened in that particular conversation.

A This was when I had talked to him about it being embarrassing and stuff. And I just told him in a general conversation, I knew it was embarrassing, I could understand that. And it was something that would be hard to talk about.

Q Are you saying after you said that, that he stayed silent after [R-193] you made that particular statement to him?

A Well, he was silent. He never spoke. I was speaking to him.

Q Okay. Once you made that statement, Deputy Stewart, and then you testified that he stayed silent, what's the next thing that's said?

A I discussed with him the case in general.

Q What did you say?

A Exact words, what I said?

Q Well, you know?

—

A Talked about the charges that had been made.

Q What did you say about the charges that had been made?

A That the allegations had come from the children and that the children —

Q Did you just say these allegations have come from the children?

A Yeah, because that's where [R-194] the allegations had come from, from the children. It was not allegations that I or Deputy Cook had brought or made.

Q What else did you say?

A I talked to him about the problems that the children who made these allegations and stuff had, you know, the things that they lived with.

Q What type of problems?

A The problems that they deal with in making these allegations. These allegations normally don't come lightly, and it's not easy for a child to say these things if it's not the truth, because it's hard on them.

Q Would you agree with me at that point in time, Deputy Stewart, you are telling him these children usually don't make up these things, in an effort to get him to talk to you?

A No.

Q Did you say—

A Restate your. Give me your question again.

[R-195] Q Would you agree with me Deputy Stewart, the reason you tell him children usually don't make these things up, it's hard on them, is that you are saying those things in an effort to get Mr. Merrill to respond to you?

A Mr. Merrill's not responding to me. I'm just explaining the case to him, in general, what we're dealing with, what the children are dealing with and what he's dealing with.

Q What else did you say?

A I explained that. And I explained to him, you know that, about the difficulty and just the mere fact of being accused makes it difficult. I talked with him about, if there was a problem and he wanted to talk about it, that's what we were there for.

Q What did you say about that, specifically, other than what you just said?

A About what, the problem.

[R-196] Q Well, that's what we're there for.

A That's all I said. I might have —

Q Are you saying — well, go ahead.

A I might have told him, you know, if you have got a monkey on your back that you are dealing with.

Q That you need to share it and get it off your back?

A No, I did not, Mr. Raines. That's not what I told him. I told him if there was a monkey on his back, he needed.

Q To what?

A He needed to think about that in relationship to the children, what the children were going through, what he was going through. I never offered him any inducement for any remarks. He was not making remarks. I was the only one making statements there.

[R-197] Q How long would you say that you continued to make statements to him?

A Three, four minutes, maybe.

Q What else was said during this period of silence?

A From-whom?

Q From you, I'm sorry.

A From me. Okay. Basically just that. Going over the children's feelings and where the allegations originated from.

Q And did you ever explain to Mr. Merrill that it would be better for him to make a statement in order to help his children?

A I did not.

Q And did you ever try and encourage that, that it would be better for him to make a statement?

A No, I did not.

Q After you finished making the statements during this period of silence, is there anything that you [R-198] said we haven't covered during this particular time-frame?

A Not that I remember.

Q What happens next?

A He makes a few comments.

Q What does he say?

A He refers to one of the girls. And then Deputy Cook interrupted him and tells him, you know, if he's going to say something, that he needs to reread him his rights.

Q And was it at that point in time that he was reread his rights?

A That's correct. And that was at the point of time when he initialled each individual rights and signed the waiver.

Q Two separate Miranda forms?

A No, it was the same form.

Q Once you read those rights and he signed the waiver?

A Yeah.

Q What was the first thing said after that?

[R-199] A That's when Deputy Cook started sharing the complaint forms with him.

Q What did Deputy Cook do exactly?

A He took the complaint forms and handed them to Mr. Merrill, and Mr. Merrill read them. And if there was any question, and there was on a couple that there was a question, he would ask Deputy Cook.

And Deputy Cook would answer the questions concerning the Miranda form.

Q Did Deputy Cook, before he handed Mr. Merrill the complaint, did he make any statements about the complaint or did he just hand it to him?

A He told him, these were the individual complaints that he was being charged with.

Q What else did he say?

A I discussed the charge. He [R-200] discussed the actual warrant part of it, the complaint being one sheet and then there was a warrant sheet with it.

Q Anything else?

A That Deputy Cook said to him?

Q Yes, sir.

A No, sir, after he would do one, he would do the other.

Q Once he did one, would he give that to Mr. Merrill?

A Yes.

Q And did he ask Mr. Merrill any questions once Mr. Merrill received the sheet?

A Not that I remember. Mr. Merrill responded back to him.

Q What specifically, to the best of your knowledge, did Mr. Merrill say about the warrant sheet?

A The complaint sheet, the complaint form, the complaint form, that's right, I don't know about the time.

[R-201]

THE CIRCUIT COURT OF THE TWENTY-EIGHTH
JUDICIAL CIRCUIT OF ALABAMA
- BALDWIN COUNTY -

CC-96-1198, 1199, 1257

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STATE OF ALABAMA,

Plaintiff,

vs.

ROBERT L. MERRILL,

Defendant.

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VOLUME II of VII

Pages: 201 - 400

LOU ANN ROSSI SCHELL
OFFICIAL COURT REPORTER

[R-202] Q Generally speaking, for the purpose of brevity, did he make any statement with respect—

A To the complaint forms?

Q Yes.

A Yes, he made the statement to all of the complaint forms.

Q What specifically was said all the other times, other than what you said?

A That's about all he said about the time.

MR. RAINES: I think that's all I have.

THE COURT: John, do you have any additional witnesses?

MR. BECK: If I could have just a second, Judge.

BY MR. RAINES:

Q One question. Who took him from the house to Robertsdale P.D.?

A I believe Deputy Robinson.

Q Do you know if they had any conversation in the vehicle?

[R-203] A No, because Deputy Robinson wasn't even familiar with it. We just called him out of the territory to transport.

Q Do you know if they had had any conversation in the vehicle?

A I don't know for a fact that they did. If there was, Deputy Robinson never relayed any information to us concerning that.

Q It's possible, though, there was a conversation in the vehicle that you are not aware about, is that correct?

A There could have been.

MR. RAINES: Thank you.

THE COURT: You may step down.

**MICHAEL COOK,**

the witness, was sworn in to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

[R-204] BY MR. BECK:

Q State your name, please.

A Mike Cook.

Q How are you employed?

A Baldwin County Sheriff's Department.

Q Is that the Miranda form that was used in this?

A Yes, it is.

Q In this interview?

A Yes, it is.

Q Is that the Miranda form that you read Mr. Merrill his rights?

A It is.

Q And Mr. Merrill initialled each one of those rights?

A Yes, he did.

Q Did he initial them after you read each individual part?

A That's correct.

Q Is that your name signed on the bottom of it?

A It is.

Q Did Mr. Merrill sign that in [R-205] your presence?

A Yes, he did.

MR. BECK: We move to admit the statement of Miranda rights?

MR. RAINES: Is this the first or the second? I know it's one form. I didn't know if you were introducing it for the purposes of first or second Miranda.

BY MR. BECK:

Q Did you read it to him one time and then have him sign it a second time after you reread it to him?

A (Nods head affirmatively).

Q And then had him sign it?

A Actually, it's the third Miranda, because there was one verbal, also. But one form was used, the first time. I read it to him. He made that statement. The second time is when he signed off on the waiver part of the bottom of it.

Q That's this one right here?

A That's correct.

[R-206] Q And in all, to your knowledge — .

MR. BECK: We move to admit.

MR. RAINES: We object to that, Judge.

Did you testify the first time that you didn't sign the waiver portion of the Miranda form?

THE WITNESS: No. From the waiver part of the bottom, where he initialled the five, there's five numbers there. That's the initial part, and then the signature is at the bottom.

MR. RAINES: Did he sign the bottom part the first time?

THE WITNESS: Ken, I'm not sure, I don't know if he did or not.

MR. RAINES: And we object to that. There's no waiver that's been proven.

THE COURT: Overrule the objection and order it admitted.

(Admitted into evidence, [R-207] State's Exhibit Number One).

BY MR. BECK:

Q To your knowledge, Mr. Merrill was read his Miranda rights on all three occasions?

A Right.

Q At least twice in your presence?

A All three times.

Q All three times in your presence?

A Right, that's correct.

Q And did you or anybody in your presence make any threats, promises, or try to coerce Mr. Merrill during any of his statements?

A No, sir.

Q And did you threaten him?

A No, sir.

Q Anybody in your presence threaten him?

A No.

Q You or anybody in your [R-208] presence tell him it would be better for him to make a confession or make a statement?

A No.

Q Did anybody, you or anybody your presence, tell him it wouldn't be worse for him if he didn't make a confession?

A No, sir.

Q And in your opinion, was his statement freely and voluntarily given?

A Yes, sir.

Q You heard Deputy Stewart testify?

A Yes, I did.

Q And the statements that Mr. Merrill made, was that an accurate account of what Mr. Merrill said?

A Yes, it was.

Q And that was in your presence as well?

A It was.

MR. BECK. Okay. Pass the witness.

[R-209]

CROSS-EXAMINATION

BY MR. RAINES:

Q Deputy Cook, you heard Deputy Stewart testify. Would you agree with his testimony exactly what was said, when it was said and the conversations at the Robertsdale Police Department?

A Yes, sir.

Q Would you agree that the first statement, after you read him his rights, Robert Merrill says, I don't want to talk about this right now?

A After the Miranda?

Q Yes, sir.

A Yes, sir.

Q Would you agree at that point in time that Sergeant Stewart talked with him?

A Yes, sir.

Q You heard Sergeant Stewart testify he was the only one that said anything during this period of time, would you agree with that?

[R-210] A John was doing pretty much all of the talking. If I said anything, it was very short, just interjected something there.

Q Do you remember, if anything, what you said?

A No, sir. Like I said, John was doing most of the talking. If I interjected anything, it was small.

Q Do you remember making a statement after he said, I don't want to talk about this right now, do you remember testifying previously that, we, being you— Sergeant Stewart and yourself, that he had to sign the waiver form if he was going to talk to you? Or testifying to that effect?

A Yes, sir, I said that.

Q Do you remember testifying that Mr. Merrill refused to talk specifically about any of these acts with you?

A Yes, sir, I remember him saying that.

[R-211] Q Do you remember questioning him specifically about the specifics of the acts?

A I remember him not specifically talking with us about it. I do think I would try to get specific with him, and I don't believe we would talk specific about it.

Q With respect to the conversation, when was it that you tried to get specific with him and he refused to talk with you?

A It would have been after the conversation with John.

Q Which one?

A After getting there, specifically, it would have been after the Miranda form, his signing of the waiver of the Miranda form.

Q Either the first or the second time between when he signed it?

A Yes, sir, but which one, I'm not sure.

Q Would you agree with me, [R-212] based on your testimony so far and Sergeant Stewart's testimony so far, that we have at least four times pinned down where my client had said he doesn't want to talk to you, he has refused to answer your questions?

A No, sir. I believe he made that statement one time.

Q What about the time referencing Sergeant Stewart, where he asked him the questions and Mr. Merrill didn't answer, stayed silent?

A Well, he never said he wanted, he just said, I don't want to talk about this right now.

Q But there were times that he asked questions and he stayed silent, as Deputy Stewart just stated?

A That's correct.

Q And then there's a time that you questioned him about specific acts, and he would not get specific with us on any of the acts, is that correct?

A Yes, sir, that's correct.

* * * * * * * * *

[R-217] that. He said it. The deputy said it. Deputy John Stewart said it. They then initiated further contact. Any my client again refused to speak.

They then again initiated further contact, telling him how it would be on his children, his family, et cetera. My client stayed silent.

They went again. And we don't know exactly where the conversation went from there. But we do know that Deputy Cook interjects and asked him about the specifics of the allegation. And my client won't talk about that. My client has done number five. That is, he has a right not to answer any questions. And he says, I don't want to talk about it. It's as clear as it can be. And the officers agree, as well as my client.

And we think the whole statement should be suppressed. And I can submit case law to Your Honor or whatever. But I think it's kind of [R-218] clear in this particular case, Judge.

THE COURT: What say the state?

MR. BECK: Judge, first of all, he never asserted his right to counsel. If anything, he just said that, I didn't want to talk about this. Not necessarily specifically he didn't want to talk. I don't want to talk about this.

The law of the Supreme Court says it must be totally unambiguous. I believe what Mr. Raines— the case that Mr. Raines, I understand that case has been overturned by the Supreme Court anyway.

MR. RAINES: This is the most recent decision, 1996, second time it went up. They turned around and reversed their rulings on two of the co-defendants. But the co-defendants that I cited has been upheld.

MR. BECK: The law says it must be totally unambiguous.

[R-219] THE COURT: All right. You already said that. What else?

MR. BECK: He was re-Mirandized. He was Mirandized three times, and he understood those rights. And he made any statement that he made or any communication that he made was after a long period of time, where he initialled each statement, each portion on the Miranda rights, and Deputy Cook went through them one by one.

And I don't think it's very clear that it was, that this conversation was initiated by law enforcement to keep Mr. Merrill talking.

THE COURT: All right. I deny the Motion to Suppress.

All right. That's all? Okay. Bring the jury in.

(Jury in).

THE COURT: Ladies and Gentlemen, first of all, let me apologize to you for the delay. We had

* * * * * * * * *

[R-1039] Q All right. I want to hand you what's been marked for identification as Defendant's Exhibit One, and tell me what that is.

A It's a Miranda form that was read to Mr. Merrill, signed by Mr. Merrill, signed by Deputy Cook and myself on 6-21-96.

Q What's contained on that form?

A A statement of Miranda rights and waiver of rights.

Q What are the rights that are on that form?

A You have the right to remain silent.

Anything you say can and will be used against you in a court of law.

You have the right to talk to a lawyer and have him present with you while you are being questioned.

If you cannot afford to hire a lawyer, one will be appointed to [R-1040] represent you before any questioning, if you wish.

And you can decide at any time to exercise these rights and not answer any questions or make any statements.

Q Is there anything else on that form?

A Yes, sir, the waiver of rights.

Q And what does that say?

A I have read the above statement of my rights and I understand each of those rights. Having these rights in mind, I waive them and willingly make a statement.

Q Is there a place for the defendant or for the defendant who is about to be questioned to sign that?

A Yes, sir.

Q And was that in fact signed by the defendant?

A Yes, sir.

Q How do you know that the

* * * * * * * * *

[R-1046] Q time.

Q Okay. First time he was given his Miranda warnings, was that off the form that you just testified to?

A Yes, sir.

Q What, if any statement, did the defendant make after he was given the Miranda warnings that time.

MR. RAINES: And I object, unless he testifies that the first time was when the defendant signed the waiver on the bottom of the form and waived his rights.

THE COURT: Well, if you know.

THE WITNESS: What now?

MR. RAINES: Deputy Stewart, can you tell me, in your opinion, did the defendant sign the waiver portion at the bottom of the Miranda form and waive his rights the first time you advised him of his rights.

THE WITNESS: Well, I didn't [R-1047] advise him of it, but he signed it on the second reading.

MR. RAINES: All right, then. So, the first time he never made a waiver? He never signed the waiver?

THE WITNESS: That's correct. But neither did he make a statement.

MR. RAINES: And I object to anything—

BY MR. BECK:

Q Was he read the waiver the first time?

A Yes, sir, he was.

Q And did, in your opinion, he appear to understand what was contained on the waiver?

A Yes, sir.

Q What was said?

MR. RAINES: And I object, unless it's the first or second time. Specify which one.

THE COURT: All right. Y'all come up here.

* * * * * * * * *

[R-1068] my objection, and that's because of proper predicate.

THE COURT: He did try to go into it and you objected to it.

MR. RAINES: And the last time I came up, I withdrew it.

THE COURT: All right. We'll do it this way. Since he's got him on cross, he can take him on cross and you can go back into it on direct.

MR. RAINES: I won't object to that.

BY MR. RAINES:

Q Didn't he say that? When you asked him that the first time, didn't he tell you that?

A Tell me what you are saying that he said to me?

Q That he didn't want to talk to you.

A That was not his exact words.

Q What were his exact words?

A His exact words: I do not [R-1069] want to talk about it right now.

Q You are a hundred percent positive that's what he said?

A Yes, sir.

Q Do you also remember, once he made that statement, making the next statement to him? Once he made that statement, I do not want to talk about this right now, do you remember making another statement to him?

A I made several statements after he said that. I talked to him for a bit.

Q You talked to him for a bit?

A But I did not ask him any questions.

Q Right. You were telling him that he needed to do things, based upon his family or his wife or other people, is that correct?

A No, sir, I did not.

Q Did you ever tell him that he needed to say something so that you could call and tell his family that

* * * * * * * * *

[R-1125] Q Well, during the intervening time, what was going on?

A (Shakes head negatively).

Q When he said, I don't want to talk about that right now, until— from that point there until he acknowledged what he had done —

A Sergeant Stewart was talking to him.

Q Was he questioning him?

A He was talking to him.

Q Was he applying any coerceive tactics, in your opinion?

A No, sir.

Q And while Sergeant Stewart was talking to him, what happened? What's the next thing that Mr. Merrill did?

A Mr. Merrill made a statement, what that statement was, I don't know. I stopped him and I said, Mr. Merrill we've got to go over this again, sign your waiver. We went over the rights again and he signed the

* * * * * * * * *

[R-1127] spoke to him, I told him the victim, what the charge was and I handed it to him. And Mr. Merrill read it.

Q How do you know he read it?

A I sat there and watched him read it.

Q Okay.

A And he said, yes, that happened.

Q And did he say anything about the dates?

A After each one he says, I'm not sure about the dates, but if that's the dates they said it happened, that's when it happened.

Q Did he say anything else after he read over the warrants and complaints?

A Like Sergeant Stewart said, he became teary eyed and asked us to take him outside of the police department and shoot him.

MR. BECK: I pass the witness.

* * * * * * * * *

[R-1274] that time, you were taken to the police station, is that correct?

A Yes, sir.

Q And I believe you were taken by another deputy, do you remember his name, not these folks, but somebody else?

A Right. I didn't know the man.

Q Once you got to the police station, there was testimony that the officers had to read you your rights three times. First time they read your rights, you didn't say anything, did you?

A (Shakes head negatively).

Q Second time you didn't want to say anything, did you?

A No, sir.

MR. BECK: Object to the leading.

THE COURT: Overruled.

BY MR. RAINES:

Q After they kept on for [R-1275] awhile, did you finally say something?

A Yes, sir, I told them that I didn't want to talk to anybody, period. I just wanted them to leave me alone.

Q Was this statement that these officers have testified to when you were at Robertsdale, did they get a tape recorder and tape record any piece of any conversation you had with them?

A No, sir.

Q Any, any piece?

A Not to my knowledge.

Q Did they get a video camera and videotape any piece of any alleged conversation between you and them?

A Not to my knowledge, no, sir.

Q Did the officers say anything to you about letting you go or letting you see your children or taking— letting you go take care of your family if you talked to them?

A Well, they kept trying to talk, and I kept telling them that I [R-1276] didn't want to talk, period. Just leave me alone. And they kept on and on. And one of them, said, Do you know why you are arrested?

And I said, No, sir, I don't have any idea why I am arrested.

And he said, Well, here. And he stuck these papers in my hand. And he said, These are the charges against you.

Q There's been testimony that you read those charges. And did you read the charges?

A Well, I had all of them at one time and I just kind of glanced at them. I didn't really read them thoroughly or anything. I just looked at them.

Q Well, there was testimony that they handed them to you individually. Is that correct? Or did you have them all at one time?

A Not to my knowledge. They just handed me the papers. Said, These [R-1277] are the charges.

Q Do you know what the statute 13A-11-88, means?

A I don't have any idea.

MR. BECK: And we object to that, there's no such thing.

BY MR. RAINES:

Q Well, eight. Pick a number. Any of them. Code statute.

A I don't have any idea.

Q Dash 66-8 rape, sexual abuse or any of those?

A (Shakes head negatively).

Q Can you admit to doing something in violation of 13A-66 dash 1 A-3?

A No, sir, I don't know the definition of that.

Q First time they read you your rights, you understood them, didn't you?

A Yes, sir.

Q And—

A That's why I told them I [R-1278] didn't want to talk to anybody. Just leave me alone. Didn't want to talk, period.

Q But they wouldn't stop, would they?

A No, sir.

Q And they did it again and they wouldn't stop?

A No, sir, they wouldn't stop.

Q You're aware that the officers, after this meeting is over, they don't go and take any steps to go and try and gather any other evidence in this case, is that correct?

A That's correct.

Q Let me ask you. To your knowledge, did any of your children go testify at grand jury?

A To my knowledge, I didn't know anything they did. I was locked up.

Q Do you have, since you have been arrested, have you tried to contact your children or threatened

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## APPENDIX E

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

August 12, 1998

Mr. Bayless E. Biles
201 East 2nd Street
P.O. Box 400
Bay Minette, AL 36507

Re: R. M.
v. Alabama
Application No. A-130

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on August 12, 1998, extended the time to and including September 25, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Jeffrey D. Atkins
Jeffrey D. Atkins
Assistant Clerk